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Remarks

Reconsideration of the above-captioned application is respectfully requested. Claim 1 has been rejected under 35 U.S.C. §103 as being unpatentable over Matthews, III et al. (USPN 5,914,746, hereinafter "Matthews"), and it is believed that the formal statement of rejection should have included, as secondary references, Stinebruner, USPN 6,133,910 and Watson, USPN 5,289,271, since these references are mentioned in the body of the rejection. Claims 2-4, 10-13, and 16-21 have been rejected as being unpatentable over Matthews in view of Watson, and Claims 5-9, 14, 15, and 22-26 have been rejected as being unpatentable over Matthews in view of Watson and Stinebruner.

The fact that Applicant has focussed its comments distinguishing the present claims from the applied references and countering certain rejections must not be construed as acquiescence in other portions of rejections not specifically addressed.

To overcome the Examiner's rejections, Claim 1 has been amended to recite that each access flag indicates whether the channel can be accessed based on user ID as disclosed on page 15, line 2. In contrast, Claim 2 sets forth that the access restriction table correlates interactive television channel numbers to Web site addresses, while independent Claim 10 recites a program for billing entities based at least in part on accessing Web sites, with the program discriminating between public Web sites and private Web sites as disclosed on page 15, lines 3-18. Claims 1-5 and 7-18 remain pending.

Rejections Under 35 U.S.C. §103

Claim 1 has been rejected under 35 U.S.C. §103 as being unpatentable over Matthews. Applicant believes that Stinebruner and Watson have been used as secondary references, based on the body of the

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rejection. Claims 2-4, 10-13, and 16-21 have been rejected as being unpatentable over Matthews in view of Watson, and Claims 5-9, 14, 15, and 22-26 have been rejected as being unpatentable over Matthews in view of Watson and Stinebruner.

Of relevance to amended Claim 1 is the allegation that the flag is taught by Stinebruner, and the admission in the Office Action that Matthews fails to teach virtual channels that are based on Web pages. The reason is as follows. There is no prior art suggestion to combine the parental lock flag of Stinebruner, which is used to prevent children from accessing objectionable Web sites, in the relied-upon table of Matthews, which presents, as "virtual channels", only executable code sources for, e.g., executing an electronic program guide (EPG). Because an EPG is in effect an index of available stations but does not typically display content, objectionable or not, there is no reason to use the parental flag of Stinebruner in the virtual channel table of Matthews.

Moreover, there is no mention in the relied-upon section of Stinebruner that the parental lock is set based on user ID. Such locks are more likely set for the entire content source without regard for user ID.

Although admitting that Matthews fails to teach Web pages for its virtual channels, the examiner takes "official notice that it is notoriously well known for an online service to use web sites". However, neither Matthews nor Claim 1 are directed to "online services" in a vacuum. Claim 1 recites a method related to an ITV. While Web sites in a vacuum are known, accessing Web sites using ITVs is another matter. Furthermore, using a particularly claimed data structure in an ITV with a particularly claimed data element to perform a particularly claimed function cannot be bootstrapped into a "well known" fact simply because the claim touches on Web sites. What remains to be shown, to properly comply with the MPEP, is where the prior art suggests the particular combination of elements set forth in Claim 1.

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While the above discussion is directed to the merits of the official notice underpinning the rejection of Claim 1, it must not be assumed that Applicant agrees with the taking of official notice in the first place, a ploy that is becoming somewhat common of late despite the guidance of MPEP §2144.03. Specifically, the MPEP advises that the taking of official notice can be taken only of facts that "are capable of instant and unquestionable demonstration as to defy dispute", giving, as examples, adjusting flame intensity as needed for heat and tape recorders automatically erasing old data when new data is recorded onto them. Official notice of dependent claim limitations "might be appropriate" but only if the facts so noticed "are of notorious character".

Accordingly, official notice "is permissible only in some circumstances", and should be "rare" in final rejections. In any case, according to the MPEP official notice is most inappropriate of technical facts in areas of esoteric technology or of specific knowledge of the prior art. Still further, "ordinarily there must be some form of evidence in the record to support an assertion of common knowledge", and "general conclusions concerning what is basic knowledge without specific factual findings will not support an obviousness rejection."

It must be noted in addition that the question is not just whether various elements are well known, but also where the prior art supplies the motivation to combine the allegedly well-known features with the rest of the claimed elements. That is, regardless of how an element is identified in the prior art, i.e., using a reference or "official notice", the remaining task for an examiner is to show why the prior art suggests the element in the combination claimed.

With the above legal requirements in mind, it would seem dispositive toward patentability that in essence the use of a table of web page-based virtual channels in an interactive television, to most people an

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esoteric technology, is anything but "capable of instant and unquestionable demonstration as to defy dispute". The test for taking official notice under the MPEP not having been complied with, the rejections are overcome.

For each and every taking of official notice, should the rejections be persisted in Applicant hereby requests not only a prior art showing under MPEP §2144.03 but also the requisite prior art suggestion to combine the allegedly well-known feature in the combination being rejected. Applicant explicitly traverses the taking of official notice for reasons above.

Furthermore, the relied-upon portion of Watson discusses recording when a user is tuned to a non-virtual channel, for billing for conventional cable TV channels. It does not relate to virtual channels, much less to Web site-based virtual channels. Accordingly, if Watson were to be combined with Matthews as proposed, Claim 1 (which requires billing based on accessing content associated with virtual channels) would not result, but rather only the combined features taught in the references, namely, Matthews' list of virtual and non-virtual channels with the user being billed for the amount of time spent tuned to a non-virtual channel as taught by Watson.

The rejections of independent Claims 2 and 10 suffer from the same official notice defects and reference combination problems noted above. Additionally, Claim 10 recites discriminating between public and private Web sites for billing purposes, something nowhere identified in the relied-upon references.

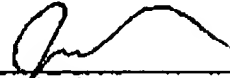
The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance.

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